

## IN THE MICHIGAN COURT OF APPEALS

### ORDER

Re: **People of MI v Kenneth Edward Provost**  
Docket No. **267632**  
L.C. No. **04-024386 FH**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10),  
orders:

The delayed application for leave to appeal filed January 9, 2006, is DISMISSED for lack of jurisdiction because it was not filed within 12 months of the August 19, 2004 judgment of sentence as required by MCR 7.205(F)(3). Neither exception to the 12-month limitation has been satisfied in this case. In particular, the second condition of the second exception was not satisfied as counsel was not requested within 12 months of the judgment of sentence. See MCR 7.205(F)(4)(b). The record does not undeniably support appellant's assertion that he did not request counsel because he believed he was not entitled. Though it was mentioned at the plea about waiver of appellate counsel, at the time of sentencing the defendant was specifically told, "if you're financially unable to retain a lawyer, you may request within 42 days appointment of a lawyer to represent you on appeal." Furthermore, the form handed to the defendant at sentencing made no affirmative representation that defendant would not be appointed counsel if he made a request. Contrast the form in this case with the form in docket number 265445 where the written form said, "you are not entitled to a lawyer appointed ... unless you meet the requirements in item 2 below."



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 03 2006

Date

*Sandra Schultz Mengel*

Chief Clerk